

1 1. A short and plain statement, made with particularity of all
2 material facts known to the pleading party that support the claim
3 showing, that creates a reasonable inference that the pleader is
4 plausibly entitled to relief. For the purposes of this paragraph, a
5 material fact is a fact that is necessary to the claim and without
6 which the claim could not be supported. As to facts pleaded on
7 belief, the pleading party shall set forth with particularity the
8 factual information supporting the pleading party's belief; and

9 2. A demand for judgment for the relief to which he deems
10 himself entitled. Every pleading demanding relief for damages in
11 money in excess of the amount required for diversity jurisdiction
12 pursuant to Section 1332 of Title 28 of the United States Code
13 shall, without demanding any specific amount of money, set forth
14 only that the amount sought as damages is in excess of the amount
15 required for diversity jurisdiction pursuant to Section 1332 of
16 Title 28 of the United States Code, except in actions sounding in
17 contract. Every pleading demanding relief for damages in money in
18 an amount that is required for diversity jurisdiction pursuant to
19 Section 1332 of Title 28 of the United States Code or less shall
20 specify the amount of such damages sought to be recovered. Relief
21 in the alternative or of several different types may be demanded.

22 B. DEFENSES; FORM OF DENIALS. A party shall state in short and
23 plain terms his defenses to each claim asserted and shall admit or
24 deny the averments upon which the adverse party relies. If he is

1 without knowledge or information sufficient to form a belief as to
2 the truth of an averment, he shall so state and this statement has
3 the effect of a denial. Denials shall fairly meet the substance of
4 the averments denied. When a pleader intends in good faith to deny
5 only a part or a qualification of an averment, he shall specify so
6 much of it as is true and material and shall deny only the
7 remainder. Unless the pleader intends in good faith to controvert
8 all the averments of the preceding pleading, he may make his denials
9 as specific denials of designated averments or paragraphs or he may
10 generally deny all the averments except such designated averments or
11 paragraphs as he expressly admits; but, when he does so intend to
12 controvert all its averments, he may do so by general denial subject
13 to the obligations set forth in Section 2011 of this title.

14 C. AFFIRMATIVE DEFENSES. In pleading to a preceding pleading,
15 a party shall set forth affirmatively:

- 16 1. Accord and satisfaction;
- 17 2. Arbitration and award;
- 18 3. Assumption of risk;
- 19 4. Contributory negligence;
- 20 5. Discharge in bankruptcy;
- 21 6. Duress;
- 22 7. Estoppel;
- 23 8. Failure of consideration;
- 24 9. Fraud;

- 1 10. Illegality;
- 2 11. Injury by fellow servant;
- 3 12. Laches;
- 4 13. License;
- 5 14. Payment;
- 6 15. Release;
- 7 16. Res judicata;
- 8 17. Statute of frauds;
- 9 18. Statute of limitations;
- 10 19. Waiver; and
- 11 20. Any other matter constituting an avoidance or affirmative
- 12 defense.

13 When a party has mistakenly designated a defense as a
14 counterclaim or a counterclaim as a defense, the court on terms, if
15 justice so requires, shall treat the pleading as if there had been a
16 proper designation.

17 D. EFFECT OF FAILURE TO DENY. Averments in a pleading to which
18 a responsive pleading is required, other than those as to the amount
19 of damage, are admitted when not denied in the responsive pleading.
20 Averments in a pleading to which no responsive pleading is required
21 or permitted shall be taken as denied or avoided.

22 E. ~~PLEADING TO BE CONCISE AND DIRECT~~ ALTERNATIVE STATEMENTS;
23 CONSISTENCY INCONSISTENCY.

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1 the capacity of any party to sue or be sued or the authority of a
2 party to sue or be sued in a representative capacity, he shall do so
3 by negative averment, which shall include such supporting
4 particulars as are peculiarly within the pleader's knowledge, and he
5 shall have the burden of proof on that issue.

6 B. FRAUD, MISTAKE, CONDITION OF THE MIND. In accordance with
7 paragraph 1 of subsection A of Section 2008 of this title, in all
8 averments of fraud or mistake, the circumstances constituting fraud
9 or mistake shall be stated with particularity. Malice, intent,
10 knowledge, and other condition of mind of a person may be averred
11 generally.

12 C. CONDITIONS PRECEDENT. In pleading the performance or
13 occurrence of conditions precedent, if the pleading otherwise
14 satisfies the requirements of paragraph 1 of subsection A of Section
15 2008 of this title, it is sufficient to aver generally that all
16 conditions precedent have been performed or have occurred. A denial
17 of performance or occurrence shall be made specifically and with
18 particularity.

19 D. OFFICIAL DOCUMENT OR ACT. In pleading an official document
20 or official act it is sufficient to aver that the document was
21 issued or the act done in compliance with law.

22 E. JUDGMENT. In pleading a judgment or decision of a domestic
23 or foreign court, judicial or quasi-judicial tribunal, or of a board
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1 or officer, it is sufficient to aver the judgment or decision
2 without setting forth matter showing jurisdiction to render it.

3 F. TIME AND PLACE. For the purpose of testing the sufficiency
4 of a pleading, averments of time and place are material and shall be
5 considered like all other averments of material matter.

6 G. SPECIAL DAMAGE. When items of special damage are claimed,
7 their nature shall be specifically stated. In actions where
8 exemplary or punitive damages are sought, the petition shall not
9 state a dollar amount for damages sought to be recovered but shall
10 state whether the amount of damages sought to be recovered is in
11 excess of or not in excess of the amount required for diversity
12 jurisdiction pursuant to Section 1332 of Title 28 of the United
13 States Code.

14 H. MOTION TO CLARIFY DAMAGES. If the amount of damages sought
15 to be recovered by the plaintiff is less than the amount required
16 for diversity jurisdiction pursuant to Section 1332 of Title 28 of
17 the United States Code, the defendant may file, for purposes of
18 establishing diversity jurisdiction only, a Motion to Clarify
19 Damages prior to the pretrial order to require the plaintiff to show
20 by a preponderance of the evidence that the amount of damages, if
21 awarded, will not exceed the amount required for diversity. If the
22 court finds that any damages awarded are more likely than not to
23 exceed the amount of damages required for diversity jurisdiction,
24 the plaintiff shall amend his or her pleadings in conformance with

1 paragraph 2 of subsection A of Section 2008 of this title.

2 SECTION 3. This act shall become effective November 1, 2018.

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4 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 04/11/2018 - DO
5 PASS, As Amended.

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